

ESTTA Tracking number: **ESTTA531331**

Filing date: **04/09/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Runsome Apps Inc.		
Entity	Corporation	Citizenship	New York
Address	P.O. Box 68 Wappingers Falls, NY 12590 UNITED STATES		

Correspondence information	Albert Ransom President Runsome Apps Inc. P.O. Box 68 Wappingers Falls, NY 12590 UNITED STATES legal@candyswipe.com Phone:8454186166
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Applicant Information

Application No	85566839	Publication date	03/19/2013
Opposition Filing Date	04/09/2013	Opposition Period Ends	04/18/2013
International Registration No.	NONE	International Registration Date	NONE
Applicant	King.com Limited 125/14 The Strand Gzira GZR 1027, MALTA		

Goods/Services Affected by Opposition


Class 009.

All goods and services in the class are opposed, namely: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments, namely, computer hardware and peripherals; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely, wireless computer peripherals; Apparatus for recording, transmission or reproduction of sound or images; blank magnetic data carriers, blank magnetic data recording discs; Compact discs, DVDs and other digital recording media featuring games; Mechanisms for coin-operated apparatus; Cash registers, calculating machines, data processing equipment, computers; Computer software for video and computer games; computer programs for pre-recorded games; computer games, namely, computer game software, downloadable applications for use on computers, smart phones, tablets and/or digital personal assistants being computer games; computer game software for use on mobile and cellular phones; computer game discs; computer game software for use in connection with computers, personal electronic devices, tablets and phones; downloadable game software; downloadable game software via a global computer network and wireless devices; fire extinguishers

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3989492	Application Date	11/14/2010
Registration Date	07/05/2011	Foreign Priority Date	NONE
Word Mark	CANDYSWIPE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2010/11/12 First Use In Commerce: 2010/11/13 Computer game software for use on mobile and cellular phones		

Attachments	85176315#TMSN.jpeg (1 page)(bytes) Opposition.pdf (7 pages)(3866043 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/Albert Ransom/
Name	Albert Ransom
Date	04/09/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 85566839, filed on March 12 2012 by King.com Limited, seeking Principal Register on trademark CANDY CRUSH SAGA which application was published for opposition on March 19 2013.

Runsome Apps Inc.)
)
Opposer,)
)
v.)
)
King.com Limited)
)
Applicant.)

Mark: CANDY CRUSH SAGA
Serial No.: 85566839

NOTICE OF OPPOSITION

The Opposer, Runsome Apps Inc, with a mailing address at, P.O. Box 68 Wappingers Falls, New York, believes its business is, or will be damaged by the registration of Application Serial No. 85566839 and hereby opposes registration of said application under section 2(d) of the Lanham Act on the following grounds:

1. Opposer owns the registered trademark, CANDYSWIPE Registration No. 3989492. Opposer's mark has become well-known since its inception in November 2010. Opposer's mark represents a downloadable game (a.k.a. "App") for use on computers and mobile devices, and has gained millions of downloads along with over 40 million game plays. Opposer has spent over two years marketing and promoting its mark, CANDYSWIPE, to become a well-known game listed in rankings of the trade channels used by both, Applicant, and Opposer.
2. Applicant's mark, CANDY CRUSH SAGA is confusingly similar to Opposer's mark, CANDYSWIPE. Applicant's goods and services which are associated with Applicant's mark in international class 009 are also very similar to Opposer's goods and services. Both marks, CANDYSWIPE, and CANDY CRUSH SAGA represent similar games with similar layouts and game play where users select and match candy pieces to remove those candy pieces for points (or scoring) within both the Applicant's, and Opposer's games.
3. The primary trade channels where both, Applicant, and Opposer's (Candy Crush Saga, and CandySwipe) games are consumed are identical (Namely,

Google Play, Apple's App Store, and Facebook). These trade channels allow consumers to instantly download the games of both, Applicant, and Opposer to their computers, or mobile devices.

4. There is a likelihood of confusion given the similarities in marks, and similarities in goods and services (or "games") of both, Applicant, and Opposer's marks. There are also multiple instances of actual confusion between the marks of Applicant and Opposer. Opposer has received private messages, and public comments (via the internet, email, and trade channels) which illustrate consumers of both, Applicant, and Opposer's games are becoming confused due to the introduction and use of Applicant's mark, CANDY CRUSH SAGA.

5. Furthermore, consumers are leaving 1 and 2 star ratings along with negative comments within Opposer's game's public, "ratings and comments" sections within the said trade channels. Consumers are claiming they were looking for, and expecting Applicant's game, CANDY CRUSH SAGA, and expressed their disappointment when they realized, Opposer's game,

CANDYSWIPE is not associated with Applicant's game. As a result, Opposer's game is potentially being ranked lower within the said trade channels due to the negative feedback generated by this confusion; thus, causing damage to Opposer's mark.

6. Applicant, and Opposer both have free variations of their games available for instant download and use via the trade channels listed herein. Typically, consumers of such products (or "Apps") are likely to make impulse purchases given the instant availability, and free price points of these products. Consumers of both, Applicant, and Opposer's games are not likely to make "careful" purchases thus further promoting likelihood of confusion.
7. Applicant's mark, CANDY CRUSH SAGA substantially reproduces Opposer's mark, CANDYSWIPE, and Applicant's mark is likely to be perceived by consumers as a variation, or another of, Opposer's CANDYSWIPE mark.
8. Applicant and Opposer's marks (CANDY CRUSH SAGA and CANDYSWIPE) contain and begin with the word CANDY; Opposer's mark, CANDYSWIPE, contains the word SWIPE (following the word

CANDY) which could imply, “to steal” or “take away” (as to remove or disappear), whereas, Applicant’s mark, CANDY CRUSH SAGA, contains the word CRUSH (following the word CANDY) which could imply “to destroy” (as to dissolve or disappear). It is likely that consumers would associate both marks with the implied meaning, “candy disappear,” or “candy vanish,” especially since both games also base their scoring on making candy pieces disappear.

9. Opposer’s mark CANDYSWIPE has been in use since November 2010.

Whereas, based on information and belief, Applicant’s mark began being used long after the first use of Opposer’s mark. Opposer filed for its trademark on November 14 2010, at which time, Applicant’s mark (and game) CANDY CRUSH SAGA was not known to exist.

10. Based on information and belief, Applicant first filed for their trademark on March 12 2012 and began using their mark around that date (Nearly two years after Opposer filed for its now, registered trademark, CANDYSWIPE). More recently, Applicant released a mobile version of their game in November 2012. Since that time, there have already been multiple instances of actual consumer confusion as stated in paragraphs 4

and 5 of this document.

Wherefore, Opposer requests that the opposition of Application No.
85566839 be sustained.

Respectively Submitted,

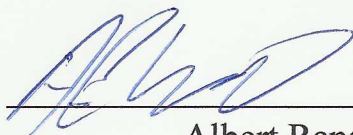
By:  Date: 4/9/13
Albert Ransom
President, Runsome Apps Inc.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Opposition was served upon Applicant's attorney of record by depositing one true and correct copy in the United States Mail, Express Mail postage prepaid Tracking# EI1635556166US, on April 9, 2013 addressed as follows:

Andrew S. Ehard
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis, Minnesota 55402-0910



Albert Ransom